f. Community Outreach

151. The record shows that WTVE served as a forum for community outreach and self-expression in a number of respects. First, WTVE's staff dealt with numerous local organizations to seek PSAs and to seek participation in issue-responsive programs being produced by WTVE (e.g., In Touch, Community Outreach, Elderly Update, For The People and Around Our Town). Second, Rep. Caltagirone testified that WTVE did an exemplary job of providing an outlet for local legislators, something that newspapers and other television stations did not do. [Caltagirone Dep. (Reading Ex. 33 at 12-17)] Third, throughout the license term WTVE aired community calendar announcements of upcoming community events. [Testimony of Kimberley G. Bradley (Reading Ex. 8 at 3-4)] Fourth, WTVE provided a local forum through its man-on-the-street interview program. [Id. at 2] Fifth, WTVE's Take 3 program was produced by and featured local high school students, on topics that they selected in conjunction with their advisors. [Testimony of George Alan Mattmiller, Jr. (Reading Ex. 6 at 8)] Sixth, WTVE assisted local organizations in producing videotapes about their organizations or activities. Finally, WTVE's staff participated in numerous local community events on behalf of the station.

8. Comparative Conclusion

152. Reading is entitled to a dispositive comparative preference due to its strong renewal expectancy. Even if Reading did not receive the renewal expectancy credit, Reading's preferences for comparative coverage, local ownership, civic activities and past broadcast experience outweigh Adams' sole preference for diversification of media outlets.

B. Misrepresentation/Lack Of Candor Issue Against Reading – Phase II

1. The Legal Standard

153. A misrepresentation is a false statement of fact, whereas lack of candor involves a concealment, evasion, or some failure to be fully informative. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983). In either case, intent to deceive is an essential element. See, e.g., Weyburn Broadcasting Ltd. v. FCC, 984 F.2d 1220, 1232 (D.C. Cir. 1993); David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1258 (D.C. Cir. 1991). Adams bears the burden of proving, by a preponderance of the evidence, each and every element of misrepresentation/lack of candor. Memorandum Opinion and Order, FCC 99M-49 (released October 15, 1999), ¶ 18 at 8; see Lucinda Felicia Paulos, 7 FCC Rcd 3145, ¶ 98 (ALJ 1992), aff'd, 8 FCC Rcd 8237 (Rev.

Bd. 1993); Cannon Communications Corp., 5 FCC Rcd 2695, ¶ 26 (Rev. Bd. 1990).

154. As demonstrated below, the record developed at the hearing on this issue demonstrates a complete absence of deceptive intent by Mr. Parker that would support a lack of candor finding against him. The representations at issue were made in reasonable reliance upon the advice of counsel and included all the information requested by the applicable forms. Furthermore, the conclusion that such conduct does not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent. For these reasons, Reading respectfully requests a finding in its favor on the lack of candor issue.

2. The Applications At Issue Are Complete And Accurate

a. The Applications provided all the information specified

155. Subsequent to the issuance of the previous decisions (i.e., final decisions in Religious Broadcasting and Mt. Baker), the Norwell Application, the Reading Application, the Twentynine Palms Application and the Dallas Application (collectively, the "Applications") were filed with the FCC. In each of the Applications, Question 7 was answered as follows:

7. Has the applicant or any party to this application had any interest in or connection with the following:

		Yes	No
(a)	an application which has been dismissed with prejudice by the Commission?	X	
(b)	an application which has been denied by the Commission?	X	
(c)	a broadcast station, the license of which has been revoked?		X
(d)	an application in any Commission proceeding which left unresolved character issues against the applicant?		X

(e) if the answer to any of the questions in 6 or 7 is Yes, state in Exhibit No. ____ the following information:

(i) Name of party having such interest;
(ii) Nature of interest or connection, giving dates;
(iii) Call letters of stations or file number of application, or docket number;
(iv) Location.

[See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)]

156. Each applicant, having affirmatively answered that it (or another party to the application) had had an interest in or been connected with "an application which ha[d] been dismissed with prejudice by the

Commission" and "an application which ha[d] been denied by the Commission," was then required to state in an attached exhibit: the name of the party having such interest; the nature of interest or connection, giving dates; the call letters of stations or file number of application, or docket number; and its location. [See Norwell Application (Reading Ex. 46, Attachment E at E24); Reading Application (Reading Ex. 46, Attachment F at F12); Twentynine Palms Application (Reading Ex. 46, Attachment G at G9); Dallas Application (Reading Ex. 46, Attachment H at H10)] As so required, each applicant attached the necessary exhibit and provided the specifically requested information; pertinent to the issue here, each of the exhibits contained virtually the same description of the Previous Decisions:

> Although neither an applicant nor the holder of an interest in the application to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in SBB was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. See e.g. Religious Broadcasting Network et al., FCC 88R-38 released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcasting Network, et al., FCC 90R-101 released October 31, 1990.
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> * * *
>
> In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an

application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.

[See Norwell Application (Reading Ex. 46, Attachment E at E30-31); Reading Application (Reading Ex. 46, Attachment F at F30); Twentynine Palms Application (Reading Ex. 46, Attachment G at G20-21); Dallas Application (Reading Ex. 46, Attachment H at H24-25)][16]

157. Thus, the descriptions of the Previous Decisions were presented in the context of affirmative acknowledgments that each applicant (or a party to the application) had had an interest in or been connected with "an application which ha[d] been dismissed with prejudice by the Commission" and "an application which ha[d] been denied by the Commission." [Applications, Question 7] Having so affirmed, the forms required the applicants to state the: "(i) Name of party having such interest; (ii) Nature of

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16 Similar descriptions of the Mt. Baker decision had previously appeared in a 1989 Form 315 application involving KWBB(TV), San Francisco, California [see West Coast United Application (Reading Ex. 46, Attachment I)] and in two 1989 applications for low power television stations (the "1989 Applications"). None of the 1989 Applications, however, referenced the Religious Broadcasting decision. [Parker Testimony, ¶ 11 and n.1 (Reading Ex. 46); West Coast United Application (Reading Ex. 46, Attachment I)] Because these applications are more than ten years old, they appear to be beyond consideration (except for background information purposes) in trying the lack of candor issue. See Policy Regarding Character Qualifications In Broadcast Licensing, 102 FCC 2d 1179, 1229 (1986) (subsequent history omitted) ("as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control, prior to the current license term should not be considered, and that, even as to consideration of past conduct indicating 'a flagrant disregard of the Commission's regulations and policies,' a ten year limitation should apply").

interest or connection, giving dates; (iii) Call letters of stations or file number of application, or docket number; (iv) Location." Notably, none of the application forms in question here call for a description of the Commission's decision regarding the dismissal or denial. Likewise, the forms do not ask for a citation to the FCC Record or any other reporter, nor to any FCC document number, where such decision might be found.

158. The Question 7 descriptions of the Previous Decisions provide all the information called for. Thus, the Religious Broadcasting description states (i) that Micheal Parker was the party to the application who had an interest in or connection with an previous application which had been dismissed / denied by the Commission; (ii) that his interest or connection was that of an independent contractor that had been found to be the real party in interest; (iii) the docket number – MM Docket No. 83-911; and (iv) the location – San Bernardino, California. Likewise, the Mt. Baker description states: (i) that Micheal Parker was the party to the application who had an interest in or connection with an previous application which had been dismissed / denied by the Commission; (ii) that his interest or connection was that of an officer, director and shareholder; (iii) the call letters and file number – KORC(TV), FCC File No. BMPCT-860701KP; and (iv) the location – Anacortes, Washington. It is beyond reasonable dispute that this information is accurate and responds fully to the question presented.[17]

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[17] After a thorough evaluation of the descriptions of the Previous Decisions, the ALJ previously found that the descriptions were "basically

159. Likewise, the Dallas Amendment was accurate. The Dallas Amendment, in accordance with Question 7, dealt with the status of Parker's applications at the time those applications were dismissed or denied. Clearly, a real-party-in-interest issue had been added against SBB, as was disclosed in the Dallas Application as originally filed. However, at the time the application was dismissed, the real-party-in-interest issue had been resolved favorably on qualifications grounds and unfavorably on comparative grounds. This interpretation is confirmed three ways:

- The Review Board's decision in Religious Broadcasting (3 FCC Rcd at 4090, ¶ 16, and 4103-04, ¶ 63) explicitly affirmed only the comparative element of the ALJ's holding and in its ordering clause made no distinction between SBB's application and the other applications denied on comparative grounds;
- The Review Board's decision in Doylan Forney, 3 FCC 6330, n.1 (Rev. Bd. 1988), stated that in Religious Broadcasting, "the Board affirmed the Presiding ALJ's finding that San Bernardino Broadcasting, whose real-party-in-interest was a Micheal Parker, was entitled to no integration credit"); and

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accurate." See Memorandum Opinion and Order, FCC 99M-49, ¶ 21 at 10 (released September 3, 1999).

- The Review Board approved an $850,000 settlement payment to SBB in 1990. See Religious Broadcasting, 5 FCC Rcd 6362 (Rev. Bd. 1990), and SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir. 1999) (affirming Commission decision rejecting proposed settlement involving a monetary payment to a party disqualified on real-party-in-interest grounds).

160. Thus, the Dallas Amendment correctly described the status of the Applications at the time those applications were dismissed or denied. At the time the SBB application was dismissed pursuant to a settlement, no character issue had been added or requested against SBB – rather, the real-party-in-interest issue had been resolved in the manner stated in the Dallas Application as originally filed. Clearly, given the disclosure of Religious Broadcasting in the original Dallas Application, there was no need to amend the Dallas Application other than to affirm that, as of the time each of Parker's applications were dismissed, there was no pending or requested character issue. The Dallas Amendment correctly stated that was the case.

b. Adams' contention that additional information is required beyond that specified by the Applications is not supported by clear notice such that an applicant could identify the necessity for such additional information with "ascertainable certainty."

161. To the extent that that Adams contends that a complete answer to Question 7 actually requires additional information beyond that

specifically called for by the application forms (e.g., a description of the reasons for the Commission's decision regarding the dismissal or denial and citations to the FCC Record where such decision might be found), such a requirement is not supported by clear notice such that an applicant could identify the necessity for such additional information with "ascertainable certainty." In that regard, it has long been held that, when the Commission requires the submission of information by a license applicant, "elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected." Bamford v. FCC, 535 F.2d 78, 82 (D.C. Cir. 1975), cert. denied, 429 U.S. 895 (1976); see also Salzer v. FCC, 778 F.2d 869, 875 (D.C. Cir. 1985) ("The FCC cannot reasonably require applications to be letter perfect when, as here, its instructions for those applications are incomplete, ambiguous or improperly promulgated").

162. The clear notice requirement is not merely a principal of "basic hornbook law in the administrative context," but also a matter of Constitutional due process; thus, where the agency seeks to impose a sanction amounting to the deprivation of property (e.g., disqualification or forfeiture) as the result of a purported violation of agency regulations, the agency's interpretation must have been previously identifiable with ascertainable certainty. General Electric Co. v. EPA, 53 F.3d 1324, 1329 (D.C. Cir. 1995) (quoting Rollins Envir. Servs., Inc. v. EPA, 937 F.2d 649, 654

n.1, 655 (D.C. Cir. 1991) (Edwards, J., dissenting in part and concurring in part).

163. Earlier this year, a panel of the D.C. Circuit Court of Appeals reaffirmed and specifically applied the requirement of "ascertainable certainty" with respect to the Commission in Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618 (D.C. Cir. 2000). There, the Court of Appeals stated:

> Because "[d]ue process requires that parties receive fair notice before being deprived of property," we have repeatedly held that "[i]n the absence of notice – for example, where the regulation is not sufficiently clear to warn a party about what is expected of it – an agency may not deprive a party of property by imposing civil or criminal liability." We thus ask whether "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform. . . ."

Trinity Broadcasting, 211 F.3d at 628 (internal citations omitted) (quoting General Elec., 53 F.3d at 1328-1329).

164. As discussed above, the application forms in question do not require a description of the reasons for Commission decisions regarding dismissal or denial, nor do they require citations to the FCC Record or other reporter (or even an FCC document number) where such decisions might be found. In fact, the Commission's own regulations provide only that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed, unless the information called for

is inapplicable, in which case this fact shall be indicated." 47 C.F.R. § 73.3517.

165. Thus, with respect to the issue of the descriptions of the Previous Decisions, there is simply no indication, express or reasonably implied, that an applicant is to describe, in addition to that information specifically requested, the content or holdings of the Commission decisions identified in Question 7. Moreover, in the context of proposed disqualification or other sanction, there is no basis for those applicants, or Parker, to have been aware to an ascertainable certainty that the failure to provide a more thorough description of the content or holdings of the Previous Decisions could lead to such a severe penalty as loss of a broadcast license.

166. With respect to the purported need for FCC Record citations, Adams has claimed that such a requirement derives from 47 C.F.R. § 1.14. Section 1.14 does state that "the appropriate reference to the FCC Record shall be included as part of the citation to any document that has been printed in the Record." However, it is far from clear, let alone identifiable with ascertainable certainty, that Section 1.14 applies to the Applications, which were filed on FCC Form 314 and FCC Form 315. There is no clear indication in Section 1.14 or its history that it is intended to apply to applications (or, specifically, exhibits to applications).[18] Even though Section

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[18] The Order adopting Section 1.14 refers only to the filing of "papers." See Order, 14 FCC 2d 276 (1968), at ¶ 2 ("When *papers* are filed with the Commission which refer to a document published in the FCC Reports, Second Series, it is therefore, appropriate to require that references to those reports

1.14's reference to FCC Record citations (and the original Section's reference to the FCC 2d Reporter) has been in effect since 1968, both Form 314 and Form 315, despite having been repeatedly amended for other reasons, have never been amended to require citations to the official reporters where applicable. Reading is not aware of any prior decision that holds that Section 1.14 requires citation to the official reporter for information supplied in applications, nor is there any reported decision in which the Commission has imposed a sanction for failing to include citations to the official FCC reporter.

167. The purported obligation to include a description of the content or holding of the Commission's decision regarding the dismissal or denial and citations to the FCC Record is not identifiable with ascertainable certainty; accordingly, neither Mr. Parker nor the applicants may properly be held answerable for the alleged failure to include such additional information.

168. Yet, even if such additional information were deemed to be required, any failure to have included it cannot properly support a finding that Mr. Parker intended thereby to deceive the Commission.[19] Specifically,

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be included as part of the citation of that document" (emphasis added)). The term "papers" is a colloquial term for pleadings. See, e.g., WBBK Broadcasting, Inc., 15 FCC Rcd 5906 (2000) at ¶ 7.

[19] Adams has previously argued that unofficial references to Commission decisions, unlike officially reported opinions, cannot be found "instantaneously in any library or through Lexis or Westlaw." (Adams' Consolidated Reply to Reading's Opposition and the Bureau's Comments to the Motion to Enlarge at 17.) It should be noted, however, that both the descriptions of the previous decisions give the respective order numbers – FCC 88-234 for Mt. Baker and FCC 88R-38 for Religious Broadcasting. A Westlaw search of these order numbers in the "Federal Communication

the descriptions of the Previous Decisions, including the absence of official reporter citations, must be read in the context of the entire Question 7. In that context, the answers to the question clearly advise the Commission that the previous decisions were made in connection with "an application which ha[d] been dismissed with prejudice by the Commission" or "an application which ha[d] been denied by the Commission." (See Applications, Question 7(a & b).)

169. Under these circumstances, the alleged failure to include a more thorough description of the Previous Decisions or official reporter citations in addition to that identifying information specifically requested, cannot rise to the level of intentional deception which would support a lack of candor finding. Thus, past Commission decisions hold that intent to deceive cannot be inferred where, as here, the information in question is a matter of public record disclosed by the applicant.[20] Moreover, as demonstrated below, Mr. Parker relied on the determination of legal counsel as to the sufficiency of these descriptions.

Commission Decision" database gives 1 result for "FCC 88-234" and it is Mt. Baker, 3 FCC Rcd 4777 (1988) and 7 results for "FCC 88R-38" one of which is Religious Broadcasting, 3 FCC Rcd 4085 (Rev. Bd. 1988).

[20] See, e.g., California State University, Sacramento, 13 FCC Rcd 17,960, 17,964 (1998) (disclosure of loss of transmitter site in collateral application rebuts lack of candor claim where applicant failed to file a Section 1.65 amendment); Viacom Int'l, Inc., 12 FCC Rcd 8474 (MMB 1997); Seven Hills Television Co., 2 FCC Rcd 6867 (Rev. Bd. 1987) at ¶ 74 (subsequent history omitted); Telephone and Data Systems, Inc., 10 FCC Rcd 10,518 (ALJ 1995) at ¶ 16 and n. 22.

c. All character issues against SBB were resolved.

170. In its comments to Reading's motion for summary decision of the lack of candor issue, the Enforcement Bureau suggested that the negative response to Question 7(d)'s inquiry, whether "the applicant or any other party to this application has an interest in . . . a broadcast application in any Commission proceeding which left unresolved character issues against the applicant," was false because, as a result of the Religious Broadcasting settlement, the SBB real-party-in-interest issue was never "resolved." That argument is without merit. Specifically, the Review Board's decision affirming the ALJ's denial of integration credit to SBB stemming from the real-party-in-interest issue finally resolved that issue when SBB elected not to file an appeal and the Review Board subsequently approved the settlement. See 47 CFR § 1.276. For the reasons stated in SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir. 1999), the Review Board would not have approved a payment of $850,000 to SBB had SBB been disqualified under the real-party-in-interest issue.

171. The SBB real-party-in-interest issue in Religious Broadcasting was fully resolved. The responses to Question 7(d), as well as the Dallas Amendment, that Mr. Parker had no interest in or connection to an application which left unresolved character issues against the applicant, are, therefore, true and accurate. However, even if one were to apply a highly

technical, legalistic (but incorrect) analysis that the settlement prevented the real-party-in-interest issue from being fully "resolved," there is still no basis for inferring an intent to deceive by Parker. Clearly, both Parker and his counsel viewed the Religious Broadcasting case as having been resolved favorably with respect to Parker's qualifications.

3. The Record Does Not Support A Finding Of Intent To Deceive.

172. During the late 1980's and early 1990's, Reading and other companies in which Mr. Parker had an interest generally used the Sidley Attorneys, including Bob Beizer, Clark Wadlow, Paula Friedman and William Andrle, as communications counsel. [Parker Testimony, ¶ 6 (Reading Ex. 46), Tr. 1896:4-1899:15; Wadlow Testimony, Tr. 1797:25-1803:3; Friedman Testimony, Tr. 2103:1-23] The Sidley Attorneys were aware of the Mt. Baker and Religious Broadcasting cases and, in fact, represented Inland Empire Television, another applicant in the Religious Broadcasting case. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 1941:19-1942:3, 1950:5-7; Wadlow Testimony, Tr. 1812:4-12, 1858:2-22] The Sidley Attorneys advised Mr. Parker that neither the Mt. Baker proceeding nor the Religious Broadcasting proceeding raised any character issues as to his qualifications to hold Commission licenses. [Parker Testimony, ¶¶ 7-8 (Reading Ex. 46), Tr. 2007:20-2008:17, 2012:20-2013:1, 2024:13-2025:14; Wadlow Testimony, Tr.

1806:10-24, 1830:15-21, 1854:23-1855:16; Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D)]

173. Specifically, with respect to the Religious Broadcasting proceeding, attorney Wadlow advised Parker, in writing, that the case did not present questions as to Parker's qualifications. [Parker Testimony, ¶ 7 (Reading Ex. 46), Letter from Clark Wadlow dated February 18, 1991 (Reading Ex. 46, Attachment D); Wadlow Testimony, Tr. 1806:10-24, 1830:15-21, 1854:23-1855:16] Mr. Parker believes that he requested this letter in response to someone's questions as to his qualifications in connection with Reading's efforts to emerge from bankruptcy. [Parker Testimony, ¶ 7 (Reading Ex. 46), Tr. 2000:1-2003:20; see also Wadlow Testimony, Tr. 1865:25-1866:24] Without question, this letter was prepared for independent business purposes, and not in connection with any FCC application. [Parker Testimony, Tr. 2016:11-2019:13, 2024:13-2026:4] In addition to what is indicated in his letter, attorney Wadlow orally advised Parker that the Review Board's decision dealt only with SBB's comparative qualifications and did not hold SBB to be disqualified. [Parker Testimony, ¶ 8 (Reading Ex. 46), 1992:24-1993:7, 1996:5-11, 2024:13-2025:14] At no time, either before or after his February 18, 1991, letter to Parker, did Wadlow ever advise Parker to the contrary (i.e., that the Religious Broadcasting case did present questions as to Parker's qualifications). [Wadlow Testimony, Tr. 1862:9-15]

174. Parker's and Wadlow's understanding of the legal implications of Religious Broadcasting was further confirmed when the Review Board approved a settlement payment of $850,000 to SBB, because they believed that the Commission's rules did not permit a disqualified applicant to receive a settlement payment. [Parker Testimony, ¶ 8 (Reading Ex. 46), Tr. 1932:11-22, 1933:20-1934:6, 1935:17-1936:5; Religious Broadcasting, 5 FCC Rcd 6372 (Rev. Bd. 1990). (Reading Ex. 46, Attachment C); see also Wadlow Testimony, Tr. 1822:25-1823:9, 1829:19-1830:2, 1830:15-21, 1854:23-1855:16] This view was correct. See SL Communications, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir. 1999).

175. The Religious Broadcasting disclosure first appeared in the Norwell Application filed July 24, 1991. [Parker Testimony, ¶ 12 (Reading Ex. 46); Norwell Application (Reading Ex. 46, Attachment E)] Parker did not draft the original language of the Religious Broadcasting disclosure. (Parker Testimony, ¶ 13 (Reading Ex. 46)] Parker believes, however, that it was written by an attorney. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17]

176. The attorneys listed on the Norwell Application were Brown, Nietert & Kaufman on behalf of Nick Maggos, the transferor, and Marvin Mercer on behalf of TIBS. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1897:12-1898:18, 1950:23-1951:6; see Norwell Application (Reading Ex. 46, Attachment E); Kravetz Testimony, Tr. 2342:6-2344:18] Marvin Mercer is a

business lawyer and bankruptcy lawyer who was also representing Reading at the time. [Parker Testimony, ¶ 13 (Reading Ex. 46)] Mr. Mercer represented TIBS in the transaction with Mr. Maggos. [Parker Testimony, ¶ 13 (Reading Ex. 46)] Mr. Parker believes that it is possible that Mercer prepared the exhibit with input from the Sidley Attorneys and/or Brown, Nietert & Kaufman. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17]

177. Parker did review the Norwell Application, including the exhibit responding to Question 7, and approved it based on the prior advice he had from the Sidley Attorneys that the Religious Broadcasting proceeding did not present an issue as to his qualifications. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 2024:13-23] Once the description had been prepared and used in an application that was deemed acceptable by the Commission, it was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 13 (Reading Ex. 46), Tr. 1952:6-17; see generally Friedman Testimony, Tr. 2107:5-2109:17]

178. As for the absence of any reference to Religious Broadcasting in the 1989 Applications, these applications were prepared by the Sidley Attorneys, who were aware of and involved in the Religious Broadcasting case, and Parker relied on their decision with respect to the content of the 1989 Applications. [Parker Testimony, ¶ 11, n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1949:21-1950:22; see West Coast United Application

(Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:7] The Question 7 exhibit to the West Coast United Application (Exhibit 3) was prepared by one of the Sidley Attorneys, most likely William Andrle, and reviewed by Wadlow. [Wadlow Testimony, Tr. 1863:19-1865:7] Wadlow does not recall why the West Coast United Application did not mention Religious Broadcasting. [Wadlow Testimony, Tr. 1863:19-1865:7] In any case, whether the 1989 Applications omitted the references to Religious Broadcasting as the result of oversight or because of an affirmative belief that no reference was required as of that time, Parker relied on his counsel for their preparation of applications and their judgment. [Parker Testimony, ¶ 11 n.1 (Reading Ex. 46), Tr. 1941:15-1942:3, 1942:13-20]

179. The Mt. Baker disclosure first appeared in a March 2, 1989, Form 315 application prepared by the Sidley Attorneys for West Coast United, the licensee of KWBB(TV), San Francisco, California. (Parker was an officer and director of that company.) [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 2012:20-2013:1; West Coast United Application (Reading Ex. 46, Attachment I); Wadlow Testimony, Tr. 1856:16-1858:22, 1863:19-1865:7] West Coast United relied upon the Sidley Attorneys to determine what was required to respond to that application's Question 7. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 1949:21-1950:22] In that regard, Parker reviewed the description, but did not second-guess the attorneys' judgment about what information to provide. [Parker

Testimony, ¶ 11 (Reading Ex. 46), Tr. 1941:19-1942:20, 1949:21-1950:22] Once the narrative had been prepared and used in an application that was deemed acceptable by the Commission, the narrative was used thereafter in subsequent applications, subject to editorial review. [Parker Testimony, ¶ 11 (Reading Ex. 46), Tr. 2012:20-2013:1; see generally Friedman Testimony, Tr. 2107:5-2109:17]

180. It is of no little significance that each of the allegedly misleading descriptions at issue here involves questions of legal interpretation and judgment. The only factual representations even remotely involved were plainly, accurately, and truthfully answered – each applicant affirmatively acknowledged that it (or another party to the application) had had an interest in or been connected with "an application which ha[d] been dismissed with prejudice by the Commission" and "an application which ha[d] been denied by the Commission." [See Applications, Answers to Question 7(a & b)] It is only the descriptions of the holdings and legal implications of those Previous Decisions that are contested. In that regard, the interpretation of those Previous Decisions is fundamentally one calling for the exercise of legal skill and judgment.

181. Likewise, the decision whether to reference the Religious Broadcasting decision in the 1989 Applications (i.e., whether a description was or was not required at that time and under those circumstances), and the status of any character issues at the conclusion of the Previous Decisions

(e.g., in response to Question 7(d) and the Dallas Amendment), are also matters that arise from Mr. Parker's reliance of the advice of counsel concerning the legal effect and implications of the Previous Decisions.

182. Finally, to the extent that Adams takes issue with the specific wording of the Dallas Amendment, that wording was drafted by the attorneys at Brown, Nietert & Kaufman based upon information that had originally come from the Sidley Attorneys. [Parker Testimony, ¶ 14 (Reading Ex. 46), Tr. Tr. 1983:1-9, 2030:14-22, 2065:17-24, 2066:17-23] Thus, Parker reasonably accepted Brown, Nietert & Kaufman's drafting of the language of the amendment, which is, in any case, accurate, because no unresolved character issue was pending as of the time the SBB and Mt. Baker applications were dismissed or denied.

183. As demonstrated above, with respect to each of the representations at issue here, Parker relied on the advice of counsel to interpret the legal effect and implications of the Previous Decisions and to describe them in the exhibits to Question 7. Since decisions concerning the legal effect and implications of the Previous Decisions and the descriptions thereof call, particularly, for the exercise of legal skill and judgment, Parker's reliance on counsel's advice was clearly reasonable. See Norcom Communications Corp, 15 FCC Rcd 1826, ¶¶ 20-21 (ALJ 1999) (reliance of the advice of counsel concerning the interpretation of FCC regulations would not support a finding of intent to deceive); Fox Television Stations, Inc., 10

FCC Rcd 8452, ¶ 119 (1995) (reliance on advice of counsel concerning the interpretation of and compliance with FCC foreign ownership regulations which was "particularly appropriate" and would not support a finding of intent to deceive). Under these circumstances, it cannot be concluded that Parker's reasonable reliance on the advice of counsel as to the Previous Decisions constitutes intentional deception by Parker.

4. Commission Precedent Supports The Conclusion That Reliance On The Advice Of Counsel Is Inconsistent With An Intent To Deceive.

184. The conclusion that Parker's reasonable reliance on the legal advice of counsel will not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent. Thus, for example, in Roy M. Speer, the Commission found that the good faith reliance on a conclusion of law, even if the conclusion is ultimately found to be incorrect and the reliance misplaced, undercut any inference of intent to deceive. Roy M. Speer, 11 FCC Rcd 18,393, ¶ 75 (1996). Similarly, in Fox Television Stations, Inc., the Commission found that the applicant's good faith reliance on counsel's advice as to a matter of law could not support a finding of deceptive intent. Fox Television Stations, Inc., 10 FCC Rcd 8452, ¶ 119 (1995).

185. Recently, in Norcom Communications Corporation, a summary decision was entered on similar circumstances. Norcom Communications Corporation, 15 FCC Rcd 1826 (ALJ 1999). There, the applicant had relied on the advice of counsel with respect to whether its management of stations owned by certain non-profit associations complied with Commission regulations. Id., ¶ 20. The ALJ stated that:

> While it is true that reliance on the advice of counsel is not a complete defense to all FCC rule violations, the agency recognized that reliance on the advice of counsel may constitute a mitigating factor when violations relating to a regulatee's character are adjudicated. For example in Fox Television Stations, Inc., the Commission found that Fox's good faith reliance of the advice of counsel involving "a complex area of the law" was an excuse to Fox's alien ownership violations. In this case, Norcom and the Associations were advised by counsel, and believed, that the formation of the Associations' stations complied with all applicable FCC regulations. In light of Commission precedent Norcom's reliance on advice of counsel is deemed to be mitigating in this case.

Id., ¶ 21. See also Abacus Broadcasting Corp., 8 FCC Rcd 5110, ¶ 12 (Rev. Bd. 1993) (and cases cited therein) ("Although the Commission is reluctant to excuse an applicant's procedural deficiencies because of the alleged malfeasance of counsel, the Commission has been equally reluctant to impute a disqualifying lack of candor to an applicant where the record shows good faith reliance on counsel." (internal citations omitted)); Gary D. Terrell, 102 FCC 2d 787, ¶ 4 (Rev. Bd. 1985) ("Carelessness and a mistake of law are entirely different from an intent to deceive.")

186. The Commission has also acknowledged that promoting an applicant's reliance on the advice of counsel serves important administrative policies. See Fox Television, 10 FCC Rcd at 8501, ¶ 119 n.68. Thus, the Commission has tried to avoid "creat[ing] an environment in which licensees are discouraged from seeking and following the advice of legal counsel." Id. Penalizing Reading here, based upon Parker's representations made on the advice of counsel, would defeat those efforts and, for all intents and purposes, compel the conclusion that Parker should have second-guessed his counsel's legal advice.

187. In this case, Parker relied on counsel's interpretation of the legal effect and implications of the Previous Decisions both with respect to the Applications and the Dallas Amendment. Parker relied on such advice in good faith and, under the circumstances, such reliance was eminently reasonable.[21] The Commission's past practice, policy, and precedent supports the conclusion that Parker's reasonable reliance on the legal advice of counsel, particularly, counsel's advice concerning matters of a legal nature, will not support a lack of candor finding.[22]

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[21] In fact, given the impressive qualifications of Mr. Parker's attorneys, not only was Mr. Parker's reliance on their advice reasonable, but it would have bordered upon foolishness for him to second-guess them.

[22] Adams may attempt to rely on authority that suggests that an applicant can be held responsible despite the advice of counsel. See RKO General, Inc. v. FCC, 670 F.2d 215, 231 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982) ("[While] it is true that reliance on counsel may render a sever sanction such as disqualification too harsh in some circumstances, . . . advice of counsel cannot excuse a clear breach of duty by a licensee" (internal

5. Conclusion

188. As shown above, the evidence demonstrates a complete absence of deceptive intent by Mr. Parker that would support a lack of candor finding against him. The representations at issue provide all the information requested by the application forms and are consistent with all the Commission's requirements that can be clearly identified to an ascertainable certainty. They were made in reasonable, good faith reliance upon the advice of counsel, and, consistent with the Commission's past practice, policy, and precedent, such reliance cannot support a misrepresentation / lack of candor finding. For these reasons, Reading is qualified to remain a Commission licensee.

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quotations and citations omitted)). Such authority, which principally involves representations or omissions of factual matters that the licensee would have clearly recognized as being incorrect, is clearly distinct from the cases involving representations on advice concerning matters of a legal nature, e.g., interpretations as to a regulation or, as here, the legal effects of an administrative adjudication.